

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901

No. 317.

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FREDERICK RODGERS, APPELLANT,

VS.

THE UNITED STATES.

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APPEAL FROM THE COURT OF CLAIMS.

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FILED MAY 11, 1901.

(18,149.)

(18,149.)

SUPREME COURT OF THE UNITED STATES.

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FREDERICK RODGERS, APPELLANT,

*vs.*

THE UNITED STATES.

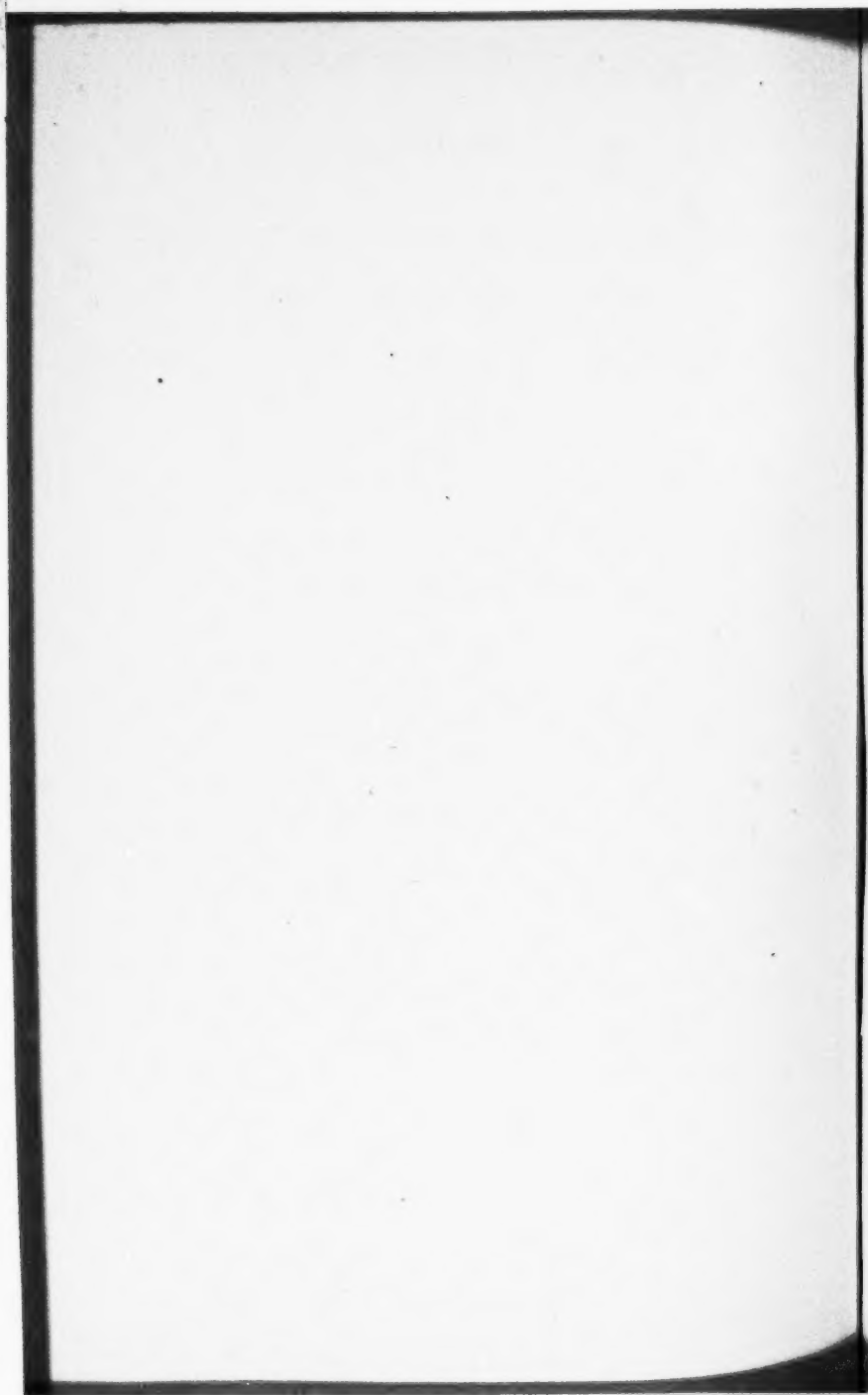
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APPEAL FROM THE COURT OF CLAIMS.

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## In the Court of Claims.

FREDERICK RODGERS	}	No. 22002.
vs.		
UNITED STATES.		

## I.—Petition.

The original petition of the claimant was filed August 8, 1900.

On motion of claimant, and by leave of court, his amended petition, in lieu of said original petition, was filed April 20, 1901, and is as follows ;

*Amended Petition.*

Filed April 20, 1901.

To the honorable the Chief Justice and judges of the Court of Claims :

The claimant respectfully shows :

1. He is a citizen of the United States and a commissioned officer of the United States Navy, at present stationed in the city of Washington and District of Columbia.

2. By an act of Congress entitled, "An act to reorganize and increase the efficiency of the Navy and Marine Corps of the United States," approved on March 3, 1899, it was, among other things, provided :

"SEC. 7. That the active list of the line of the navy as constituted by section one of this act shall be composed of eighteen rear admirals. \* \* \* Provided, that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier general in the army.

2 SEC. 13. That after June 30, 1899, commissioned officers of the line of the navy, and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army ; Provided, that such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty. \* \* \*

By section 1466 of the Revised Statutes of the United States it was, among other things, provided :

"Sec. 1466. The relative rank between officers of the navy, whether on the active or retired list, and officers of the army, shall be as follows, lineal rank only being considered :

\* \* \* \* \*

Rear admirals with major generals.

Commodores with brigadier generals.

\* \* \* \* \*

By section 1261 of the Revised Statutes of the United States it was, among other things, provided :

"SEC. 1261. The officers of the army shall be entitled to the pay herein stated after their respective designations:

\* \* \* \* \*

Major general: Seven thousand, five hundred dollars a year.

Brigadier general: Five thousand, five hundred dollars a year."

\* \* \* \* \*

3. On March 3, 1899, the claimant was duly appointed a rear admiral in the line of the United States Navy, and was commissioned accordingly, and at all times thereafter has held his said commission and has performed the duties of his grade, which have been assigned to him, namely, from March 3, 1899, until February 13, 1901, inclusive, shore duty as the president of the board of inspection and survey, and from February 14, 1901, until March 2, 1901, inclusive, sea duty as senior squadron commander of the United States naval force on the Asiatic station. From the date of his said appointment until March 2, 1901, inclusive, the claimant was embraced in the nine lower numbers of the grade of rear admiral.

4. Pursuant to the provisions of law, hereinbefore set forth, the claimant was entitled to receive from the United States, for his services during the period from March 3, 1899, until June 30, 1899, the pay which is provided for a brigadier general of the United States Army, to wit: pay at the rate of five thousand five hundred dollars per annum, which for the said period would have amounted to one thousand, eight hundred and two dollars and seventy-eight cents. But during the said period the United States, in violation of the said laws and in violation of the claimant's rights in the premises has allowed and paid the claimant only the said pay provided for a brigadier general less fifteen per centum, to wit: pay at the rate of four thousand six *thousand* and seventy-five dollars per annum, which, for the said period, has amounted to one thousand five hundred and thirty-two dollars and thirty-six cents. Wherefore the claimant was and is entitled to receive from the United States for his services rendered during the said period two hundred and seventy dollars and forty-two cents in addition to the sum allowed and paid to him therefor.

5. At all times between July 1, 1899, and February 13, 1901, both inclusive, pursuant to the provisions of law, hereinbefore set forth, the claimant has been, and is entitled to receive from the United States the pay, less fifteen per centum, which is provided for a major general of the United States Army, to wit: pay at the rate of six thousand three hundred and seventy-five dollars per annum, which for the period from July 1, 1899, until February 13, 1901, both inclusive, would amount to the sum of ten thousand, three hundred and twenty-three dollars and ninety-six cents. But during the said period, the United States, in violation of the laws hereinbefore set forth, and in violation of the claimant's rights in the premises, has allowed and paid the claimant only the pay, less fifteen per centum, which is provided for a brigadier general of the United States Army, to wit: pay at the rate of four thousand six hundred

and seventy-five dollars per annum, which for the period from July 1, 1899, until February 13, 1901, both inclusive, amounted to seven thousand five hundred and seventy dollars and ninety cents. Wherefore the sum allowed and paid to the claimant by the United States for the services rendered by him from July 1, 1899, to February 13, 1901, both inclusive, is two thousand, seven hundred and fifty-three dollars and eight cents less than the sum which he was and is entitled to receive.

5        6. Between February 14 and March 2, both inclusive, pursuant to the provisions of law hereinbefore set forth, the claimant was entitled to receive pay at the rate of seven thousand dollars per annum, which, for the period between February 14 and March 2, both inclusive, amounted to two hundred and fifty-nine dollars and seventy-three cents. Wherefore the sum allowed and paid to the claimant by the United States for the services rendered by him during the said period is ninety-four dollars and forty-three cents less than the sum which he was entitled to receive.

7. The United States has, furthermore, failed to pay the claimant the sum of two hundred and thirty-three dollars and twenty cents, which is the balance due and payable to him on account of the commutation in lieu of his proper allowance for quarters during the said period, over and above the allowance which he has received.

8. The claimant has made due demand upon the United States for the pay and allowances to which he has been and is entitled as aforesaid, and for the said sums of two hundred and seventy dollars and forty-two cents; two thousand, seven hundred and fifty-three dollars and eight cents; ninety-four dollars and forty-three cents, and two hundred and thirty-three dollars and twenty cents; in all amounting to the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, but the same has not been

6        paid to him, nor any part thereof.

The claimant is the only person owning or interested in the above claim above set forth, and no assignment or transfer of the same, or any part thereof, or interest therein has been made. The claimant is justly entitled to receive and recover from the United States for and on account of his services hereinbefore mentioned, the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, after allowing all credits and offsets. The claimant has always borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to rebellion against it.

Wherefore, the claimant prays for judgment against the United States in the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, and for such other and further relief as this honorable court may be entitled to grant both at law and in equity in the premises.

FREDRICK RODGERS,  
By McCAMMON & HAYDEN, *Attorneys.*

## DISTRICT OF COLUMBIA, ss.:

James H. Hayden, being duly sworn, deposes and says that he is one of the attorneys for Fredrick Rodgers, the claimant named  
 7 in the foregoing petition; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

JAMES H. HAYDEN.

Sworn to and subscribed before me this 24th day of April, 1901.

ROBERT C. MILLER, [SEAL.]

Notary Public.

McCAMMON &amp; HAYDEN,

*Attorneys for Claimant,*

1420 F Street N. W., Washington, D. C.

II.—*Traverse.*

In the Court of Claims of the United States, December Term, A. D.  
 1900.

FREDERICK RODGERS }

*vs.*

THE UNITED STATES. }

No. 22002.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,

*Assistant Attorney General.*

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III.—*Findings of Fact and Conclusion of Law.*

Filed April 22, 1901.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

## I.

The claimant is a commissioned officer of the United States Navy.

## II.

On March 3, 1899, the claimant was appointed a rear admiral in the line of the United States Navy and commissioned accordingly, and from that day until the date of the commencement of this suit held his said commission and performed the duties of his grade which were assigned him, namely, from March 3, 1899, to February 13, 1901, inclusive, shore duty as the president of the board of inspection and survey, and from February 14 to March 2, 1901, inclusive, sea duty as senior squadron commander of the United States naval force on the North Atlantic station.

## III.

For his services rendered during the period between March 3, 1899, and June 30, 1899, the claimant was allowed pay at the rate of \$4,675 per annum, which, for the said period, amounted to \$1,536. For the same period the pay of a brigadier general of the United States Army, or pay at the rate of \$5,500 per annum, would have amounted to \$1,808.16, or \$272.16 more than the said sum allowed the claimant.

## IV.

For his services, rendered during the period between July 1, 1899, and February 13, 1901, the claimant was allowed pay at the rate of \$4,675 per annum, which, for the said period, amounted to \$7,595.14. For the same period the pay of a major general in the United States Army, less 15 per centum, or pay at the rate of \$6,375, would have amounted to \$10,356.22, or \$2,761.08 more than the said sum allowed the claimant.

## V.

For the period between July 1, 1899, and February 13, 1901, the claimant was paid, as commutation in lieu of an allowance of quarters, the sum of \$1,166. For the same period a major general of the United States Army would have been entitled to receive, as commutation in lieu of his proper allowance of quarters, the sum of \$1,386.20, or \$220.20 more than the sum paid to the claimant.

9

## VI.

For his services rendered during the period between February 14 and March 2, 1901, inclusive, the claimant was allowed pay at the rate of \$5,500 per annum, which, for the said period, amounted to \$256.16. For the same period the pay of a major general of the United States Army, or pay at the rate of \$7,500 per annum, would have amounted to \$349.32, or \$93.16 more than the said sum allowed the claimant.

## VII.

On April 29, 1899, the Comptroller of the Treasury rendered a decision, wherein he ruled that the claimant, while on shore duty, should receive pay at the rate of \$4,675 per annum (5 Comp. Dec., 750). The United States has failed to pay the claimant the said sums of \$272.16, \$2,761.08, \$220.20, and \$93.16, amounting to \$3,346.60.

*Conclusion of Law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and the petition is therefore dismissed.



IV.—*Opinion of the Court.*

PEELLE, J., delivered the opinion of the court :

On March 3, 1899, the claimant was appointed a rear admiral in the United States Navy, and as such claims the pay and allowance of a brigadier general in the United States Army from that date until June 30, 1899, without any deduction for shore service. Since July 1, 1899, he claims the pay and allowances, except forage, of a major general in the United States Army, less 15 per centum pay, when on shore duty.

The claimant grounds his right to recover as stated on sections 7 and 13 of the act of March 3, 1899, entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States" (chap. 413, 30 Stat. L., 1004).

Section 7 reads :

"That the active list of the line of the navy, as constituted by section one of this act, shall be composed of eighteen rear admirals, seventy captains, one hundred and twelve commanders, one hundred and seventy lieutenant commanders, three hundred lieutenants, and not more than a total of three hundred and fifty lieutenants (junior grade) and ensigns: Provided, that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army. Officers, after performing three years' service in the grade of ensign, shall, after passing the examinations now required by law, be eligible to promotion to the grade of lieutenant (junior grade): Provided, that when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the army: And provided further, that nothing contained in this section shall be construed to prevent the retirement of officers who now have the rank or relative rank of commodore, with the rank and pay of that grade: And provided further, that all sections of the Revised Statutes, which, in defining the rank of officers or positions in the navy, contain the words 'the relative rank of' are hereby amended so as to read 'the rank of,' but officers whose rank is so defined shall not be entitled, in virtue of their rank, to command in the line or in other staff corps. Neither shall this act be construed as changing the titles of officers in the staff corps of the navy. No appointments shall be made of civil engineers in the navy on the active list under section fourteen hundred and thirteen of the Revised Statutes in excess of the present number, twenty-one."

At the time of the passage of that act there were, as we are advised, six rear admirals in the navy with the relative rank of major general in the United States Army, and ten commodores with the relative rank of brigadier general in the army.

By the provisions of section 7, excluding commodores from the active list of the line of the navy, the rank or grade of commodore is abolished and, in effect, merged into that of rear admiral. And

as the active list was, among other officers, to be composed of eighteen rear admirals, and only six were serving at the time of the passage of the act, there were vacancies to be filled by appointment, and in respect to certain of that grade it was provided "that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army."

As the rank of commodore was abolished by the act, the claimant and others holding that grade were advanced by appointment, pursuant to Revised Statutes, section 1366, to the grade of rear admiral, and in part are "embraced in the nine lower numbers of that grade," so that for the purpose of pay a distinction is created by the act in the grade of rear admirals and special provision made therefor.

When the act was passed, though the relative rank of a commodore was that of a brigadier general in the army, the pay was less, and it was largely because the officers in the navy were paid less than the officers of corresponding rank in the army that dissatisfaction arose. So to meet that objection in part the rear admirals "embraced in the nine lower numbers of that grade" were given the pay and allowance of a brigadier general in the army.

Thus, by the abolition of the rank of commodore and the advancement of those theretofore in that grade to the nine lower numbers in the grade of rear admiral, their pay is increased from \$5,000 (sea pay) to \$5,500 per annum, an increase of 10 per cent. over the highest rate of pay theretofore received by them as commodores, while for shore duty they receive 15 per centum less pay, plus their allowance for commutation for quarters (\$720), or in all \$5,395 per annum, an increase of nearly 35 per cent. over their shore pay (\$4,000) as commodores, and as vacancies occur in the grade above the nine, those embraced in said lower numbers will according to seniority be advanced, and they will then be entitled to receive the pay and allowances, except forage, of a major general in the army, as provided by section 13 of said act, which reads:

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army: Provided, that  
11 such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: Provided further, that when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the army detailed for duty in similar places: Provided further, that naval chaplains, who do possess relative rank, shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: And provided further, that no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: And provided further, that nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the navy."

The claimant's contention that by virtue of the first proviso to section 7 he was entitled to the same pay and allowance as a brigadier general from the date of the approval of the act of March 3 to June 30, 1899, without any deduction for shore duty, and thereafter to the pay and allowances, except forage, of a major general in the army, less 15 per centum pay for shore duty, cannot be sustained without holding that section 13 superseded and abrogated section 7 in respect to the pay of the rear admirals "embraced in the nine lower numbers of that grade."

Both sections are part of the same act, and the first proviso to section 7 is a special provision for the class of officers there stated. There is also a special provision in the second proviso to the effect that "when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the army."

If the claimant's contention should prevail, it is questionable whether that provision would not also be abrogated; but whether that be correct or not, the general rule is that a general provision will not repeal a special provision unless there are express words to that effect or an irreconcilable conflict in the language used.

Legislation must, in case of doubt, be viewed in the light of the historical circumstances and surroundings to ascertain the meaning of the language employed. Prior to the passage of the act the highest or sea pay of a commodore was \$5,000 per annum, shore duty \$4,000, and leave or waiting orders pay \$3,000. That of a rear admiral was for sea service \$6,000 per annum, shore duty \$5,000, and for leave or waiting orders pay \$4,000, being less pay than that of brigadier or major general in the army, whose rank they assimilated, respectively, at the time of the passage of the act.

This was in part the mischief to be remedied.

12 The rear admirals in the service when the act was passed, and those appointed thereafter in the upper nine of that grade, became entitled, after June 30, 1899, by virtue of section 13, to \$7,500 per annum, an increase over the prior sea pay of rear admirals of 25 per centum; and for shore service, 15 per centum less pay, plus their allowance for commutation for quarters (\$864), making \$7,239 per annum, an increase of nearly 45 per centum, while of course the percentage of increase in the pay of the com-

modores so advanced to the upper nine of that grade was still greater.

What reason the Congress had for making the distinction they did in the pay of rear admirals we do not know. It may have been based on long or distinguished services. But whatever the reason may have been, our duty is to give force and effect to the language used if it can be done.

Section 13 standing alone appears broad enough to justify the claimant's contention, but construing the two sections together as parts of the same act, and keeping in view the canon of interpretation as to the purpose of the act and the former service, status and pay of rear admirals and commodores, we think there is no difficulty in upholding section 7 as permanent legislation not inconsistent with the general provisions of section 13.

By the proviso to section 7 the rear admirals "embraced in the nine lower numbers of that grade" are segregated from the other officers there named and placed in a separate class for the purpose of fixing their pay; and special provision being made therefor, section 13 must be read with that in view; and thus reading the section, we interpret it to mean that commissioned officers not otherwise specially provided for in the act "shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." This construction is neither new nor novel, but is abundantly supported by authority.

Section 13 is in general terms, and the language there used does not indicate that it was the intention of the Congress to abrogate the special provision made in section 7 for the rear admirals "embraced in the nine lower numbers of that grade;" and special provision having been made for them it cannot be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made. (Endlich on the Interpretation of the Statutes, 223 *et seq.*)

"The reason and philosophy of the rule is that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms—or treating the subject in a general manner, and not expressly contradicting the original act—shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all." (Sedgwick on the Construction of Statutory and Constitutional Law, 98.)

Here is a case directly in point:

"Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act, as the legislature is not to be presumed to have intended a conflict." (Crane v. Reeder, 22 Mich., 322, 334, and the numerous authorities there cited.)

We cannot attribute to the Congress the folly of having in the same act provided two rates of pay for the same officers, one a temporary rate for four months at \$5,500, and thereafter a permanent rate at \$7,500.

It must therefore be held that the purpose and intent of the Congress was, as expressed in the proviso, that "each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army," and that such pay will continue so long as they remain in the nine lower numbers of that grade.

The next question is, What deduction, if any, should be made from the claimant's pay while on shore duty, and when should such deduction begin—that is, whether from the date of the act, March 3, or after June 30, 1899?

Section 13 provides in express terms "that after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." Hence, the proviso thereto fixing 15 per centum as the amount to be deducted from the pay of such officers when on shore duty did not, of course, become operative as to those whose pay was so fixed until after that date, *i. e.*, until after such officers became entitled to receive the pay and allowances therein provided for them.

But in respect to the rear admirals "embraced in the nine lower numbers of that grade," though their pay is elsewhere provided for, they are nevertheless included among the commissioned officers referred to, and for that reason the proviso as to them became operative upon the passage of the act—that is, when they became entitled to receive the pay thus specially provided for them.

This construction is not only in harmony with the language of the two sections, but also with the long-established policy of the Government, continued in section 13, to pay officers in the navy less when on shore duty than when at sea.

If the Congress had intended to except any of the commissioned officers referred to in section 13 from the operation of the proviso in respect to less pay for shore than for sea service they would have said so, and not having done so we cannot add an exception thereto. Therefore, our conclusion is that the pay of the claimant is fixed by the proviso to section 7, except that for shore service he will be entitled to "receive the allowances, but 15 per centum less pay than when on sea duty," as provided in said section 13.

For the reasons stated, the petition must be dismissed.

Nott, Ch. J., was not present when this case was tried and took no part in the decision.

14 V.—*Judgment of the Court.*

FREDERICK RODGERS }  
                           *vs.* } No. 22002.  
 UNITED STATES. }

At a Court of Claims held in the city of Washington on the 22d day of April 1901 judgment was ordered to be entered as follows :  
 The court on due consideration of the premises find for the defendants and do order adjudge and decree that the petition of the claimant Frederick Rodgers be dismissed.

BY THE COURT.

15 In the Court of Claims of the United States.

FREDERICK RODGERS }  
                           *vs.* } No. 22002.  
 THE UNITED STATES. }

*Application for Appeal.*

Now comes the claimant, Frederick Rodgers, by McCammon & Hayden, his attorneys, and prays the court to allow him an appeal to the Supreme Court of the United States from the judgment of this court, entered in the above-entitled cause on the 22nd day of April, 1901.

McCAMMON & HAYDEN,

*Attorneys for Claimant.*

Filed April 29, 1901.

At a Court of Claims held April 29, 1901 it was ordered that the foregoing application for appeal be allowed as prayed for.

BY THE COURT.

16 In the Court of Claims.

FREDERICK RODGERS }  
                           *vs.* } No. 22002.  
 UNITED STATES. }

I John Randolph assistant clerk of the Court of Claims hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact, and conclusion of law, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at the city of Washington this 6th day of May, A. D. 1901

JOHN RANDOLPH,

*Ass't Clerk Court of Claims.*

Endorsed on cover: File No. 18,149. Court of Claims. Term No. 317. Frederick Rodgers, appellant, *vs.* The United States. Filed May 11th, 1901.

**MOTION**







No. 317.

Motion to advance.

2902  
Office Supreme Court U. S.  
**FILED**  
NOV 19 1901  
JAMES H. MCKENNEY,  
Clerk.

Filed <sup>THE</sup> Nov. 19, 1901.  
Supreme Court of the United States.

OCTOBER TERM, 1901.

FREDERICK RODGERS, APPELLANT,

v.

THE UNITED STATES, APPELLEE.

No. 317.

Appeal from the Court of Claims of the United States.

**MOTION TO ADVANCE.**

Now comes the appellant and moves the court to advance the above-entitled cause for hearing on a date as early as may be convenient and proper under the rules of court.

The matter involved in this case is the difference between the amount paid to the appellant for his services as a rear-admiral of the United States Navy, during the period between March 3, 1899, and March 3, 1901, and the amount which he claims to have been entitled to re-

ceive for those services. There was no issue of fact between the parties, and the determination of the question presented calls for nothing but the interpretation of Sections 7 and 13 of the act of Congress, approved March 3, 1899, entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States."\*

Under the rulings of the Treasury Department and the judgment of the Court of Claims, from which this appeal runs, rear-admirals, embraced in the lower nine numbers of that grade, have received and are still receiving, and until the determination of this cause will receive, about \$2,000 less per annum than the pay to which they have been, are, and will be entitled, if the appellant's contention with regard to the interpretation of the act of March 3, 1899, be correct.

The final decision of this cause will establish a rule to determine, not only the amounts of pay which the appellant and certain rear-admirals were entitled to receive for their services in the past, but also the rate of pay provided by law for officers of like rank, at the present time and in the future.

For this reason the appellant respectfully submits that an early hearing and decision of the cause will be but

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\*SEC. 7. That the active list of the line of the Navy, as constituted by section one of this act, shall be composed of eighteen rear-admirals.

*Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier-general in the Army.

SEC. 13. That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty.

just to the many persons interested, and will relieve the accounting officers from further difficulty in the application of the above-mentioned sections of the statute.

JOSEPH K. McCAMMON,

JAMES H. HAYDEN,

*Attorneys for Appellant.*

I join in the application.

J. K. RICHARDS,

*Solicitor-General.*